

REMARKS

Overview

This amendment accompanies a request for continued examination. Claims 1-44 and 47-76 are pending in the present application and all claims have been rejected. Claims 1, 4, 27, 34, 43 and 44 have been amended. The present response is an earnest effort to place all claims in proper form for immediate allowance. Reconsideration and passage to issuance is therefore respectfully requested.

This Amendment confirms the telephone call made to the Examiner on August 16, 2010 inquiring of what the Examiner had in mind with the curious statement at page 51 of the Office Action encouraging the Applicant to have a telephone interview to discuss Applicant's claims after the Applicant files its next set of claims. Applicant's counsel was hoping to take into account now what, if anything, the Examiner had in mind. But, the Examiner refused to discuss the claims and said simply this is a statement the current Commissioner Kappos encourages the Examiners to use in their Office Actions.

The Applicant and Counsel have gone through the claims and meticulously gone through the Office Action in an effort to amend the independent claims in a manner to make them clearly statutory subject matter under 35 U.S.C. § 101 and to comply with the recent U.S. Supreme Court *Bilski* decision and the PTO guidelines and finally to clearly emphasize the significant difference between Applicant's claimed method and system and that of the combined teachings of the references Rao I, Sato and Russek, all as explained below.

35 U.S.C. § 101 Rejection

This application was acted on March 25, 2010 before the Supreme Court *Bilski* decision and before the current Examiner guidelines of July 27, 2010. It was believed then, and is

believed now, that Applicant does satisfy the machine transformation test, although as we know the U.S. Supreme Court has now said that is not the only test for patent eligible processes under 35 U.S.C. § 101.

The implementing guidelines of July 27, 2010 indicate that factors weighing towards patent eligibility are if the claim is more than a mere statement of a concept, and if it describes a particular solution to a problem to be solved in a tangible way; and finally do the performance steps describe something that is observable and verifiable. These claims meet all of these guideline subtests. The claims defined positive identifiable and verifiable steps that sequentially occur.

Applicant's system uses a centralized server having a risk assessment module for determining the risk status, in communication with a module for transmitting directions resulting from that risk status to hospital personnel [0035]. The system communicates with care givers by graded alerts [0062] and audits whether an alerted physician provides the necessary information within a defined period of time and if not, automatically provides another suitable physician for attendance to the health care risk of the patient in question. In this way, the patient is monitored and appropriate health care providers are alerted, in an ever escalating manner to ensure that the patient is not overlooked or forgotten [0103]. This is the heart of the invention; and the heart of the system which eliminates the real and significant risk that a patient needs are overlooked or forgotten, a need that is greatly needed in hospital systems worldwide, not just Australia and/or the United States.

All of the independent claims, both the method claims (1, 34 and 43) and the system or apparatus claims (47, 69 and 70), require that the system or the process does not have to rely on human memory and automatically sends instructions to a first physician, and then another, and

then another, etc., if indications of addressing the patients at risk are not received in a defined period of time. The art of record is simply not like this at all.

The Examiner in his Office Action admits the combination of Rao I/Sato does not disclose the step of providing a direction to another health care provide in response to receive confirmation in a defined period of time that a previously directed health care provider has attended the patient. (See Final Rejection, March 25, 2010 at page 5). To make up for this deficiency, the Examiner argues that in view of the teaching of Russek, it would be obvious to provide this critical step of Applicant's invention. But, Russek is nothing of the kind. Russek shows a certain condition triggers a physical alarm in the hospital which can only be silenced or temporarily silenced by operation of a manual switch located near the patient's bedside. This alarm goes off when a patient's monitoring system shows something has happened to unbalance the patient. It does not operate in a defined period of time for alerting one care provider and then to provide an alert to another care provider if the first doesn't indicate addressing the patient's risk need. Moreover, this is a physical alarm system operable in the hospital with a patient in the bed, a completely different thing than what's required by Applicant's claims trying to prevent patients from being overlooked or forgotten.

In short, the combined teachings of the three references do not even address the problem that Applicant addresses, let alone provide the same solution. It therefore cannot be seen how the invention is obvious, under *KSR*. With respect to the patent eligibility issue of 35 U.S.C. § 101, Applicant believes it is likely the Examiner will drop this rejection in view of the clarification by the U.S. Supreme Court and in view of the Office guidelines of July 27, 2010. Applicant would also point out that in an effort to further obviate this issue, earlier claim limitations upon

contingencies have been completely eliminated with instead positive step performances.

Reconsideration and allowance is respectfully requested.

Conclusion

This amendment accompanies the filing of a Request for Continued Examination (RCE). Please charge Deposit Account No. 26-0084 the amount of \$405.00 (small) for the RCE per the attached transmittal.

This is a request to extend the period for filing a response in the above-identified application for two months from June 25, 2010 to August 25, 2010. Applicant is a small entity; therefore, please charge Deposit Account No. 26-0084 in the amount of \$245.00 to cover the cost of the two month extension.

No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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